

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

WEST BEND MUTUAL INSURANCE COMPANY,

Plaintiff,

Case No. 20-cv-153-pp

v.

UPS GROUND FREIGHT, INC., *et al.*,

Defendant.

---

**ORDER REMINDING PLAINTIFF OF OPTION TO FILE AMENDED  
COMPLAINT IN LIEU OF RESPONDING TO DEFENDANT'S MOTION TO  
DISMISS (DKT. NO. 18)**

---

On February 6, 2020, defendant UPS Ground Freight (UPS) filed a motion to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 18. UPS argues that the plaintiff has asserted only state law claims against it and that those claims are preempted by federal law under the Carmack Amendment to the Interstate Commerce Act and the Federal Aviation Administration Authorization Act.

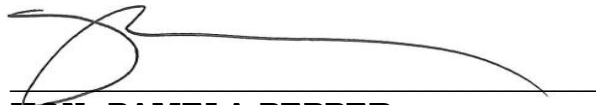
Under Civil Local Rule 7(b), if the plaintiff wishes to oppose the motion it must do so within twenty-one days—that is by February 27, 2020. The plaintiff is free to timely file a response to the motion to dismiss, but the court reminds the plaintiff that it has another option—it may file an amended complaint to try to cure the alleged deficiencies. See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. and Nw. Ind., 786 F.3d 510, 522 (7th Cir. 2015) (explaining that a responsive amendment may avoid the need to decide the motion or reduce the

number of issues decided). Fed. R. Civ. P. 15(a)(1) allows the Plaintiff to file the amended complaint as a matter of course within twenty-one days after service of the responsive pleading.

The court **ORDERS** that by February 27, 2020 the Plaintiff shall file either an amended complaint or its response to the motion to dismiss.

Dated in Milwaukee, Wisconsin this 10th day of February, 2020.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**